

The Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of:

Racal Survey, Inc.

File:

B-228499

Date:

February 22, 1988

DIGEST

Whether offeror will deliver equipment meeting specification requirements of request for proposals is not a matter of the technical acceptability of its proposal—where technical proposals were not required—but of the offeror's responsibility. General Accounting Office will not review the contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of contracting officials, or an allegation that the solicitation contains definitive responsibility criteria which have been misapplied.

DECISION

Racal Survey, Inc., protests the award of a contract to Del Norte Technology, Inc., under request for proposals (RFP) No. N62306-87-R-0037, issued by the Naval Oceanographic Office, Bay St. Louis, Mississippi, for short range positioning systems consisting of various components, along with training and associated data, for use in navigation. Racal argues that Del Norte's offer should have been rejected because its "equipment" does not meet certain of the solicitation's specification requirements.

We dismiss the protest.

The RFP requested offers on a firm-fixed-price basis and provided for "a single award to the responsive offeror whose total offer on all items is the most advantageous to the government." The solicitation contained a detailed, 5-page description of the equipment sought. It did not require the identification by model number of the equipment to be supplied or the submission of technical information for evaluation purposes. The RFP specified that the basic system should be comprised of two control measurement units, four transmitter/receivers (two to act as masters and two as remotes), antennas, cables and other hardware necessary for operation.

At issue in this protest is paragraph 3.4.2 of the specifications, which stated in part that:

"The master unit shall be capable of providing automatic continuous calibration during system operation. This calibration shall entail the adjustment of the turnaround delay interval which is subtracted from the signal to provide a corrected range. Automatic calibration shall maintain system accuracy over the entire operating temperature range."

Also at issue is paragraph 3.5 of the specifications, which contains certain "maintainability" requirements.

Racal, Del Norte, and a third firm, subsequently eliminated from the competitive range, submitted proposals. Although the RFP did not require the submission of technical proposals, Racal did submit a comprehensive technical proposal. Del Norte took no exception to the specification requirements; it attached to its proposal a brief brochure.

The Navy then submitted the proposals for a technical review. Those who reviewed the proposals had no questions concerning Racal's offer since its proposal had addressed every specification requirement. The only concern expressed about Del Norte's proposal was the capability of its equipment to provide the automatic, continuous self-calibration required by paragraph 3.4.2 of the specifications, quoted above, a feature not discussed in the Del Norte literature with which the Navy was familiar.

Face-to-face discussions were conducted with Del Norte and Racal at which each provided explanations and diagrams showing how its calibration system operated. Following these negotiating sessions, the Navy issued an amendment rewording paragraph 3.4.2. Instead of specifying how calibration must be accomplished, as originally written, the revised paragraph 3.4.2 expressed the requirement in more general performance terms:

"The system shall maintain system accuracy through the use of procedures which completely eliminate any requirement for calibration of the system on a measured range. The system shall maintain system accuracy over the entire operating temperature range."

The Navy also requested best and final offers (BAFO's) at the same time. Both offerors signed and returned the amendment and submitted timely BAFO's. The BAFO's again involved only price proposals; no technical proposals were required or submitted. Award was made to Del Norte as the lowest priced offeror.

Racal protested to the contracting officer the award of the contract in a brief letter in which it argued that "[n]o known manufacturer (other than Racal) can meet [paragraph 3.4.2 of] the specifications" [and] "to the best of our knowledge the Del Norte [equipment does not meet the RFP's maintainability requirements.]" The contracting officer denied Racal's protest on the basis that Del Norte's ability to satisfy the RFP's requirements was a matter of that firm's responsibility, which he had determined in the affirmative prior to making award. Racal then filed a more detailed protest with our Office arguing that Del Norte's proposal should have been rejected as technically unacceptable.

Racal argues that the "equipment" manufactured by Del Norte does not meet revised paragraph 3.4.2 of the specifications in that it does not maintain system accuracy over the entire operating temperature range. The protester also argues that Del Norte's equipment will not meet the maintainability requirements of specification paragraph 3.5 in that it (1) is unable to perform the self-tests necessary to identify any malfunctioning circuit board or subassembly; (2) does not have components mounted on plug-in printed circuit boards; and (3) does not contain test points which are accessible without excessive disassembly of the system.

In its comments on the protest, Del Norte addresses each of these four areas. Del Norte points out that Racal's concerns about Del Norte's equipment appear to be based on out-dated information stemming from a past relationship between the two companies which ended in early 1984. Del Norte asserts that its equipment has been subsequently improved and will be appropriately modified in order to meet all of the requirements of the RFP.

Racal has approached this procurement, and its protest, as though the RFP required offerors to submit comprehensive technical proposals in which the competitors would explain how they intended to satisfy each specification requirement. As we indicated above, however, this solicitation was not so structured. In fact, it resembled one for a sealed bid procurement in that it included complete specifications and contemplated an award of a firm-fixed-price contract to the low, "responsive" offeror. Del Norte, therefore, had no obligation to submit a comprehensive technical proposal in response to the RFP. Assuming that its price was the lowest, its offer was "responsive" and it was determined by

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the contracting officer to be responsible, Del Norte properly was selected for award.

Racal asserts that it is familiar with Del Norte's "equipment" because of a business relationship between the two companies which ended several years ago. The essence of Racal's protest is that if awarded this contract, Del Norte will deliver equipment which will not meet the solicitation's calibration and maintainability requirements. Although Racal insists that its protest concerns the technical acceptability of Del Norte's offer, and not that firm's responsibility, we think the contracting officer correctly characterized the issue as the latter.

Del Norte's offer did not take exception to any of the RFP's specification requirements. Where, as here, an offeror promises to comply with the requirements of a solicitation, the contention of a protester that the offeror will be unable to comply with the requirements raises the issue of whether that offeror is responsible. Endine, Inc., B-222617, June 5, 1986, 86-1 CPD ¶ 528.

This conclusion clearly applies to the maintainability requirements, which were a part of the specifications, to which Del Norte took no exception, and which never were the subject of any discussion between Del Norte and the Navy. It also applies to the calibration requirements of the specifications. Even though the Navy took advantage of the flexibility inherent in a negotiated procurement to discuss with each offeror its approach to calibration and then amended the specification from one describing how calibration was to be achieved to one which established a more general performance objective, in acknowledging receipt of that amendment concurrently with the submission of its BAFO Del Norte offered to comply with that objective as it did with all other specification requirements. Whether it could do so, again, is a matter of responsibility.

By making the award to Del Norte, the Navy contracting officer has determined Del Norte to be responsible. Our Office will not object to the contracting officer's affirmative determination of responsibility absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria have not been met. 4 C.F.R. § 21.3(f)(5) (1987). Since there has been no showing of possible fraud or bad faith by the procuring

officials or the possible misapplication of definitive responsibility criteria, the agency's determination of Del Norte's responsibility will not be reviewed by our Office.

Protest dismissed.

Ronald Berger

Deputy Associate General Counsel

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